



## **Louisiana Public Defender Board Qualifications and Rates For Mitigation Specialists, Investigators, and Expert Witnesses**

*Revised March 1, 2012*

### **INTRODUCTION:**

The Louisiana Public Defender Board (LPDB) recognizes that effective advocacy often requires incurring expenses in preparing and presenting a client's case, including the use of experts in pre-trial testing and as witnesses at hearings and trial. LPDB provides funding directly to local district public defenders for the payment of these expenses in non-capital adult and juvenile matters. In cases where the death penalty is sought, LPDB maintains a separate fund from which counsel for indigent clients may apply for assistance. Counsel must receive written approval from the State Public Defender or Capital Case Coordinator before hiring an expert in a capital case. Please send an email to [capital@lpdb.la.gov](mailto:capital@lpdb.la.gov) to obtain a copy of the form to be used for expert funding requests in capital cases. Bills submitted without prior approval may be denied or reduced.<sup>1</sup> When counsel submits an expert's bill for payment, they must certify that the work was reasonably necessary and has been completed to an adequate standard.

The Louisiana Public Defender Act enables LPDB to establish qualifications and rates for expert witnesses, investigators and social services. Louisiana Capital Defense Guideline §925(E) states: "The state defender shall draft and publish a roster of presumptively reasonable rates of compensation for ... investigators, mitigation specialists and experts across the state...." LPDB has surveyed vendors regarding their rates and qualifications, surveyed attorneys regarding their use of vendors and indigent court cost funds, and reviewed the policies and practices of other jurisdictions regarding the payment of expert witnesses.

This document identifies categories of vendors that fall within The Louisiana Public Defender Act, and lists both the qualifications and range of rates for each category of vendors. **This list of experts is neither exhaustive nor exclusive.** The Louisiana Public Defender Act applies to requests for funds for the experts listed in this rule and others deemed necessary by assigned counsel. Assigned counsel may determine a need for experts not included on this list. Similarly, the rates paid to experts may fall above or below the rates listed herein. However, requests to pay a vendor at a rate greater than those listed below are strongly discouraged.

Consistent with the rules of some other states, **travel time and waiting-in-court time** shall be compensated at ½ of the applicable hourly rate specified below.

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<sup>1</sup> Requests for expert funding in state post-conviction capital cases should be made to the Capital Post-Conviction Project of Louisiana ("CPCPL"), attention Gary Clements. Post-conviction requests for DNA testing of an "unknown sample secured in relation to the offense" should be made to LPDB. See CCRP 926.1.

## **EXPERTS & RATES**

<b><u>EXPERT</u></b>	<b><u>RATE RANGE</u></b>
<b>Accident Reconstruction</b>	
Without professional degree	60/hr - 100/hr
With professional degree	100/hr - 150/hr
<b>Arson</b>	
Without professional degree	50/hr - 100/hr
With professional degree	100/hr - 250/hr
<b>Ballistics</b>	50/hr - 150/hr
<b>Bloodstain Pattern</b>	
Without professional degree	75/hr - 150/hr
With professional degree	150/hr - 250/hr
<b>Crime Scene Reconstruction</b>	150/hr - 250/hr
<b>DNA Analyst</b>	150/hr - 250/hr
<b>Document Examiner/Handwriting</b>	75/hr - 150/hr
<b>Drug Analyst</b>	
Bachelor's Degree	75/hr - 100/hr
Master's Degree	125/hr - 150/hr
<b>Graphics</b>	45/hr - 75/hr
<b>Investigator</b>	35/hr - 75/hr
<b>Medical Doctor</b>	150/hr - 250/hr
<b>Neuropsychiatrist</b>	200/hr - 350/hr
<b>Neuropsychologist</b>	150/hr - 300/hr
<b>Nurse</b>	
Registered Nurse	30/hr - 60/hr
Master's Degree	60/hr - 100/hr
<b>Pathologist/Medical Examiner</b>	200/hr - 300/hr
<b>Pediatrician</b>	150/hr - 250/hr
<b>Pharmacologist</b>	75/hr - 150/hr
<b>Psychiatrist</b>	150/hr - 300/hr

<b>Psychologist</b>	100/hr - 250/hr
<b>Special Education</b>	150/hr - 200/hr
<b>Social Worker (testifying witness)</b>	100/hr - 175/hr
<b>Toxicologist</b>	125/hr - 225/hr
<b>Victim Outreach Coordinator</b>	35/hr - 100/hr

### **REIMBURSEMENT FOR EXPENSES**

Experts will be reimbursed for reasonable expenses, including but not limited to coach airfare and rental cars.

**Per Diems:** experts will be reimbursed for reasonable lodging expenses, as informed by the Louisiana Travel Guide, subject to the approval of the State Public Defender or Capital Case Coordinator. Meals will be reimbursed pursuant to the Louisiana Travel Guide. See <http://www.doa.louisiana.gov/osp/travel/travelpolicy/2011-12travelguide.pdf>

**Mileage:** experts will be reimbursed for mileage at a rate not to exceed that permitted by the Louisiana Travel Guide. In no case will an expert be reimbursed for mileage for travel "within the Parish" where the proceedings are taking place.

**Receipts:** all reimbursable expenses, whether for records, travel expenses, etc., must be submitted with a receipt/proof of payment.

**Administrative and Overhead Costs:** not reimbursed.

### **EXPERT QUALIFICATIONS**

#### **Accident Reconstruction**

##### **Qualifications**

*Required:* Training in collision analysis (e.g., state police training)

*Preferred:* Bachelor's degree in engineering and professional engineering certification (state board of registration)

#### **Arson**

##### **Qualifications**

*Required:* Significant experience as a firefighter (minimum 5 years) including assignment to the department's arson squad

*Preferred:* Training as an arson investigator (A.T.F., F.B.I., state police)

#### **Ballistics**

##### **Qualifications**

*Required:* Significant firearms training and experience including investigative techniques and laboratory analysis (e.g., police, military) of firearms



**Bloodstain Pattern****Qualifications**

*Required:* Forty hours of training in bloodstain pattern interpretation with the instructor recognized by the International Association of Bloodstain Pattern Analysts

*Preferred:* Bachelor's degree in relevant science including course work in mathematics, biology, chemistry and related sciences and a member of the International Association of Bloodstain Pattern Analysts

**Crime Scene Reconstruction****Qualifications**

*Required:* Bachelor's degree in engineering, chemistry, biology, physics or related science

*Preferred:* Extensive relevant laboratory and actual crime scene experience

**DNA Analyst****Qualifications**

*Required:* Bachelor's degree in biology, chemistry or related science

*Preferred:* Master's degree or doctorate degree and significant experience

**Document Examiner/Handwriting****Qualifications**

*Required:* Significant training (and/or an apprenticeship) as a document examiner or handwriting expert

*Preferred:* Membership in a national association in the field, e.g., National Association of Document Examiners, Association of Forensic Document Examiners, etc.

**Drug Analyst****Qualifications**

*Required:* Bachelor's degree in biology, chemistry or related science

*Preferred:* Master's degree and significant experience executing relevant testing procedures

**Graphics****Qualifications**

*Required:* Significant training in computer graphics or comparable graphics experience

*Preferred:* Bachelor's degree in graphic arts, architecture, industrial design, etc.

**Investigator****Qualifications**

*Preferred:* Bachelor's degree in investigation, criminal justice or other similar education and experience in criminal investigations

**Medical Doctor****Qualifications**

*Required:* Licensed medical doctor, board certified in medicine

*Preferred:* Board certified in area at issue in individual case

**Neuropsychiatrist****Qualifications**

*Required:* Licensed physician (state board of registration) and board certified or eligible in neuropsychiatry

**Neuropsychologist****Qualifications**

*Required:* Doctorate degree with post-graduate training in the assessment and treatment of persons with brain dysfunction and specialized training in administering and interpreting neuropsychological tests

*Preferred:* Clinical experience in the assessment and treatment of persons with brain dysfunction

**Nurse****Qualifications**

*Required:* Registered nurse

*Preferred:* Board certified in subspecialty (e.g., pediatrics, psychiatry, etc)

**Pathologist/Medical Examiner****Qualifications**

*Required:* Licensed physician (state board of registration) and board certified in pathology

*Preferred:* Board certified in forensic pathology and/or anatomic pathology

**Pediatrician****Qualifications**

*Required:* Licensed medical doctor

*Preferred:* Board certified in pediatrics

**Pharmacologist****Qualifications**

*Required:* Bachelor's degree in pharmacology

*Preferred:* Significant relevant experience

**Psychiatrist****Qualifications**

*Required:* Licensed physician (state board of registration) and board certified or eligible in psychiatry

*Preferred:* Relevant subspecialty (e.g., child/adolescent psychiatry, geriatric psychiatry, research psychiatry, addiction psychiatry)

**Psychologist****Qualifications**

*Required:* Doctorate degree in related discipline (education, psychology, etc.) and licensed to diagnose and treat mental illness

*Preferred:* Licensed clinical psychologist (state board of registration) and specialization in relevant field such as trauma, child/adolescent development, schizophrenia, mood disorders, etc.

**Special Education****Qualifications**

*Required:* Master's degree in special education, psychology or related field and significant experience in the field of special education (either as educator, administrator, evaluator or advocate)

**Social Worker (testifying witness)****Qualifications**

*Required:* Master's degree or doctorate degree in social work and licensed to diagnose and treat mental illness

*Preferred:* Specialization in relevant field such as trauma, family counseling, adoption, juveniles (who testifies as social historian expert; to be differentiated from a mitigation specialist; see below)

**Toxicologist****Qualifications**

*Required:* Doctorate degree in biology, chemistry or related science

*Preferred:* Significant experience executing relevant testing procedures

**Victim Outreach Coordinator****Qualifications**

*Required:* Successful completion of a week-long victim outreach training and cultural competency for the particular case

**SUBMISSION OF MITIGATION INVESTIGATION PLAN**

Louisiana's Capital Defense Guidelines state: "The defense team should consist of no fewer than two attorneys..., an investigator, *and a mitigation specialist.*" §913 (A)(1)(a) (emphasis added). The American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (Revised Edition February 2003) are in accord. Guideline 4.1 (A)(1). Louisiana Capital Defense Guideline §913 (A) further states: "... (b) The defense team must include individuals possessing the training and ability to obtain, understand and analyze all documentary and anecdotal information relevant to the client's life history. (c) At least one member of the team must have specialized training in identifying, documenting and interpreting symptoms of mental and behavioral impairment, including cognitive deficits, mental illness, developmental disability, neurological deficits; long-term consequences of deprivation, neglect and maltreatment during developmental years; social,



cultural, historical, political, religious, racial, environmental and ethnic influences on behavior; effects of substance abuse and the presence, severity and consequences of exposure to trauma."

The ABA's commentary explains:

A mitigation specialist is ... an indispensable member of the defense team throughout all capital proceedings. Mitigation specialists possess clinical and information-gathering skills and training that most lawyers simply do not have. They have the time and the ability to elicit sensitive, embarrassing and often humiliating evidence (e.g., family sexual abuse) that the defendant may have never disclosed. They have the clinical skills to recognize such things as congenital, mental or neurological conditions, to understand how these conditions may have affected the defendant's development and behavior, and to identify the most appropriate experts to examine the defendant or testify on his behalf. Moreover, they may be critical to assuring that the client obtains therapeutic services that render him cognitively and emotionally competent to make sound decisions concerning his case.

Perhaps most critically, having a qualified mitigation specialist assigned to every capital case as an integral part of the defense team insures that the presentation to be made at the penalty phase is integrated into the overall preparation of the case rather than being hurriedly thrown together by defense counsel still in shock at the guilty verdict. The mitigation specialist compiles a comprehensive and well-documented psycho-social history of the client based on an exhaustive investigation; analyzes the significance of the information in terms of impact on development, including effect on personality and behavior; finds mitigating themes in the client's life history; identifies the need for expert assistance; assists in locating appropriate experts; provides social history information to experts to enable them to conduct competent and reliable evaluations; and works with the defense team and experts to develop a comprehensive and cohesive case in mitigation.

The mitigation specialist often plays an important role as well in maintaining close contact with the client and his family while the case is pending. The rapport developed in this process can be the key to persuading a client to accept a plea to a sentence less than death.

For all of these reasons the use of mitigation specialists has become "part of the existing 'standard of care'" in capital cases, ensuring "high quality investigation and preparation of the penalty phase."

#### ABA Guideline 4.1—The Defense Team And Supporting Services (B) The Mitigation Specialist.

As used in the ABA guidelines, the term "mitigation specialist" is best understood as referring to a non-testifying mitigation investigator whose critical role it is to complete a comprehensive bio-psycho-social history investigation of the client. In fact, in the United States

Supreme Court's two seminal ineffective assistance of counsel capital cases, *Wiggins v. Smith*, 539 U.S. 510 (2003), and *Rompilla v. Beard*, 545 U.S. 374 (2005), the Court rejected "consulting mental health experts as a substitute for conducting the mitigation investigation." Russell Stetler, "Mitigation Investigation," *The Champion*, March 2007, p. 61 (available at <http://www.nacdl.org/champion.aspx?id=4719>). A mitigation specialist, then, is distinct from a witness who testifies regarding the defendant's social history. The distinction is an important one because as a core member of the defense team mitigation specialists are agents of the defense and all privileges and protections apply. *See, e.g.*, Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases, Guideline 4.1. Those privileges and protections may be waived if the agent takes the stand. *See* Commentary to ABA Guideline 10.4 ("counsel should structure the team in such a way as to distinguish between experts who will play a 'consulting' role, serving as part of the defense team covered by the attorney-client privilege and work product doctrine, and experts who will be called to testify, thereby waiving such protections.").

A thorough mitigation investigation can be very time-consuming. Accordingly, the attorneys on a capital team -- who are ultimately responsible for the mitigation investigation (*see* ABA Guideline 10.4) -- need to formulate a plan to achieve the investigation in as efficient and cost-effective way as possible under the facts of the case.

Such a plan may include the retention of a number of mitigation investigators and specialists with varying degrees of experience. For example, it is likely that the important tasks of collecting documents and maintaining master documents such as records requests logs and potential witness lists can be performed by less qualified mitigation investigators, paralegals or interns so long as their direction and work are overseen by a highly qualified mitigation



specialist in conjunction with counsel. Similarly, locating and investigating the background of witnesses, including conducting court and public records searches, need not be performed by a qualified mitigation specialist if supervised by the mitigation specialist in conjunction with counsel.

However, every mitigation investigation should be directed and overseen by a qualified, **culturally competent** mitigation specialist, working closely with counsel, who can compile a comprehensive and well-documented bio-psycho-social history of the client based on an extensive investigation; analyze the significance of the information in terms of impact on development, including effect on personality and behavior; find mitigating themes in the client's life history; identify the need for expert assistance; assist in locating appropriate experts; provide social history information to experts to enable them to conduct competent and reliable evaluations; and work with the defense team and experts to develop a comprehensive and cohesive case in mitigation. Although the bio-psycho-social history is a cornerstone of mitigation, it must be supplemented by investigation into aggravating factors, prior charged and uncharged offenses, and any other fact that constitutes mitigation.

**Mitigation investigators are to be compensated as follows: 35/hr-100/hr.**

**Paralegals, interns and assistants are to be compensated at a rate of between 25/hr-35/hr.**